UNITED STATES DEPARTMENT OF LABOR

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ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH

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SUMMARY MINUTES

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NOVEMBER 20-21, 2019

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The Advisory Board met in River Room A, Holiday Inn Paducah Riverfront, 600 N 4th Street, Paducah, Kentucky, Steven Markowitz, Chair, presiding.

MEMBERS

SCIENTIFIC COMMUNITY

JOHN DEMENT
GEORGE FRIEDMAN-JIMENEZ
MAREK MIKULSKI
KENNETH SILVER

MEDICAL COMMUNITY

MANIJEH BERENJI
ROSE GOLDMAN
STEVEN MARKOWITZ, Chair
CARRIE A. REDLICH

CLAIMANT COMMUNITY

KIRK DOMINA
RON MAHS
DURONDA POPE
CALIN TEBAY (via telephone)

DESIGNATED FEDERAL OFFICIAL

DOUG FITZGERALD

WEDNESDAY, NOVEMBER 20, 2019

Welcome and Introductions:

Mr. Fitzgerald called the meeting to order at 9:11 a.m. The above-listed board members were in attendance. After a round of introductions, Steven Markowitz, Board Chair, welcomed participants and outlined the day's agenda.

Board Operation Update and Status of Recommendations:

Mr. Fitzgerald noted that recommendations from the board's last meeting are still pending review by the Secretary of Labor.

DEEOIC Updates, John Vance, DEEOIC Branch Chief, Policy, Regulations, and Procedures:

The program continues to receive a large number of claims on a weekly basis, with 626 cases submitted between September 28 and October 25, 2019. Among their new initiatives for 2020, the program plans to centralize their medical benefit authorization process, which manages post-adjudication case activities relating to claims with a living employee receiving medical benefits. In addition to its current focus on home health care, this group will transition to take care of ancillary services such as durable medical equipment. The program also has an integrity group, which evaluates claims for waste, fraud and abuse. The quality assurance program, which operates through existing managerial oversight, will be expanded with the addition of a group of staff whose singular focus is decision quality.

There will be two additions to the Special Exposure Cohort (SEC) class. The Y-12 Oak Ridge class has been designated for the period of January 1, 1977 through July 31, 1979, and preliminary assessment indicates that approximately 280 claims are affected by this new class. The West Valley Demonstration Project site in New York has also been added to the SEC class, with a designated period of January 1, 1969 through December 31, 1973 and approximately 20 potentially affected claims.

The public has been making significant use of the Site Exposure Matrices (SEM), with approximately 1,300 unique IP addresses accessing the website in the past month. The program's SEM contractor evaluates facility information submitted by the public and makes additions and updates to the SEM. The SEM

currently has 129 DOE site profiles and information on over 16,400 unique toxic materials used in facilities covered under Part E. In the past year four new site profiles have been added, profiles have been developed for over 3,500 uranium mines, and the program has done work in conjunction with DOE site closure profiles. The SEM team recently completed the profile for the Paducah DUF6 facility, adding nearly 100 toxic substances and 120 labor categories and aliases. Mr. Vance outlined some of the updates and changes in Procedure Manual (PM) 4.0, including several changes that were made in response to input from the board.

Modifications to the PM:

-requiring claimant signatures on claim forms
-an instruction that allows the IH staff to interact with claimants
-modified labor categories with regard to asbestos exposure
-clarification for CEs on the issue of diagnosis versus symptoms
-clarified guidance regarding SEM searches for pneumoconiosis, pulmonary fibrosis and interstitial lung disease
-inclusion of asbestos, coal dust, and silica in the list of toxins for pneumoconiosis/other
-updates to the role of medical benefit examiners and evaluating claims for medical benefits

Interstitial lung disease (ILD), pneumoconiosis, and pulmonary fibrosis can all be searched under the term pneumoconiosis/other to identify toxins linked to those diseases. If a claims examiner (CE) sees that an employee has a diagnosis of ILD, asbestosis, et cetera they will be able to search under the pneumoconiosis/other category to find the toxins associated with that employee's work. Member Redlich noted that the SEM often produces results that are closely related to the questions that the CE asks the Contract Medical Consultant (CMC).

In PM 4.0 there will be an optional process when there is an identified need for the IH to engage with the claimant. The CE will be responsible for arranging a call with the claimant. The IH will monitor the call and ask a series of probing questions about the nature of the claimant's work with certain materials. The CE and the IH will use that information to construct a memo and a federal IH will consider whether or not their original characterization of exposure was accurate. The program is looking for input from the board when it comes to applying specific definitions or changing the IHs' current methodology.

With regard to obtaining better quality decisional outcomes, the IH will be asking probative questions to determine the accuracy of claimants' information in alignment with the information in the case file and apply an adjudicatory process. Claimant interviews can be critically important to add context to exposures that would not necessarily appear in the case file. Member Redlich noted that while the SEM produces a long list, there are a limited number of exposures that actually cause these diseases. If IHs understood that, they would know what to focus on.

Mr. Vance will provide the board with information on the number of public submissions to the SEM and the revision work that has been done in conjunction with those submissions. He will also provide them with the total number of claims that go to a CMC in a given month, complete with rationale.

Review of Action Items and Department Responses:

Chair Markowitz discussed recent action items. There were multiple public comments at a past meeting about suggested additions to the SEM, including neptunium. In response, the board requested that the public be informed about the procedure for submitting those additions. As a result of the evolution of the PM and the partial acceptance of several presumptions a number of claims were reopened. The Department of Labor (DOL) promised to provide the board with updates on the outcome of those reopened claims, and the board continues to request that update.

Chair Markowitz reviewed the cumulative recommendations made by the board since 2016 and the department's responses to those recommendations.

Rescinding Circular 15-16

DOL has rescinded the circular.

Adding Institute of Medicine (IOM) information to the SEM

Several years ago the IOM produced a report on the SEM to DOL and the board recommended that the department incorporate a subset of a table of sources from the IOM report into the SEM. The department agreed to do so in a limited fashion. Member Berenji volunteered to be a point person for DOL and assist them in identifying other resources.

Involving former workers in conducting occupational health interviews at the Resource Centers

DOL agreed, to the extent that the department has control over the hiring process.

Allowing industrial hygienists to interview claimants

The response to this recommendation was covered in Mr. Vance's update.

Making notes from DOL's national policy calls public

DOL did not agree with this recommendation.

Making case files available to claimants through a public portal

DOL agreed and is currently working to make electronic records available.

DOL should enhance its scientific and technical capabilities

The department did not agree with this recommendation.

Making entire case files available to the CMC or the IH

The department felt that this would be excessive.

Altering the PM to ensure that asbestos presumptions reflected current medical knowledge about asbestos

The department accepted this recommendation, though the board still had questions around the completeness of the list of job categories for asbestos presumption. Several board members volunteered to take another look at the list of job categories.

Modifying the PM language around occupational asthma presumptions

The department agreed with many of the changes proposed by the board, and Member Redlich will review the language of PM 4.0 in the near future.

Presumptions for chronic obstructive pulmonary disease (COPD)

Ultimately, DOL and the board do not agree on a presumption for COPD.

Occupational Health Questionnaire (OHQ) revisions

A redrafted OHQ, structured around the board's recommendations, is currently being scrutinized by DOL. It is in a draft status and will probably undergo a pilot phase before being implemented. Chair Markowitz requested that the Board be provided with the redrafted OHQ in time to provide input before it is released.

Borderline Beryllium Lymphocyte Proliferation Tests (BeLPTs)

The DOL did not accept the board's recommendation that two BeLPTs be considered the equivalent of one positive BeLPT for the purposes of claims adjudication.

CMC reports

The board requested a sample of CMC reports or claims to examine. DOL has provided those reports. The board's request for resources to review a larger set of claims is still pending.

Claims Status Data, 2016-2019 Provided by DOL:

The board requested data from DOL for claims accepted and denied for the most common health conditions, as well as the reason for denial, for the past three years. The board reviewed a spreadsheet of the top twenty health conditions, organized by ICD 10 codes, and the number of claims approved, denied, and pending. Chair Markowitz went through the list and provided context on the magnitude of claims, the salient conditions, degrees of approval, and main reasons why some claims are not approved. Member Berenji requested clarification on how long the pending claims had been in pending status. Member Goldman mentioned a paper about how to grade chronic encephalopathy related to past solvent exposures and promised to share it with the Board. Member Berenji noted that the dearth of cognitive impairment claims was most likely due to lack of education among workers. Chair Markowitz said that former worker programs do not address this issue, partly because it is difficult to address in a screening examination. Member Domina pointed out that it takes mental stamina to follow through with the claims process, and many of these claimants may be lost because their condition prevents them from being able to continue the process.

Reopened Claims Data:

The department has a process in which the medical director reviews approximately 50 completed claims per quarter. Those claims are then sent to the policy branch, which evaluates the medical director's audits and prescribes actions to correct any problems that the medical director has found. Chair Markowitz summarized these data for the past five quarters, during which the medical director evaluated approximately 250 claims. Of those, 100 were for impairment; the medical director found that 28 of those needed improvement. He looked at 83 claims for causation and found only one claim that needed improvement. A total of 60 claims were examined for various other issues; of those 60, approximately one quarter needed improvement.

Claims Review: Asthma, ILD, CBD, Sarcoidosis:

Member Dement reviewed an ILD case of a long-time sheet metal worker at Rocky Flats. The worker filed a claim for ILD based on a CT scan and the initial review by the CE and the SEM did not identify asbestos exposures. The IH received the statement of facts, which listed aluminum synthetic vitreous fibers and diesel as exposures. They were also sent the OHQ, which said that the individual had a minimum of two years of direct asbestos exposure, but this was not considered in the IH review. The CMC also failed to identify asbestos exposure. The claimant received a former worker exam, and the examining physician identified asbestosis, told him to file a claim, and the claim was awarded based on the asbestos presumption. This case had several fatal flaws, some of which may be addressed by the SEM update, but there were several missed opportunities to identify the asbestos exposure.

Chair Markowitz introduced a pulmonary fibrosis case, 1504, that was denied and said that he agreed with that decision. The claimant was a decontamination worker and then a draftsman designer, and the statement of accepted facts (SOAF) was well written. The physician looked at the OHQ but ultimately relied on the IH's assessment of the dose of exposure, which was low to very low. Chair Markowitz noted that there seems to be a standard set of references that are used almost independent of the case. The CE's SOAF seems to itemize which documents are sent to the IH, and it is hard to tell whether the IH actually looks at the OHQ in each case.

Member Silver discussed cases 1346 and 0411, both of which involved uranium mill and mine worker exposure. When the Part E amendments passed in 2004, miners and millers originally covered by the Radiation Exposure Compensation Act (RECA) were written

into Part E for an additional $50,000 reimbursement. These claims are initially filed with the Department of Justice (DOJ) and then reviewed by DOL. Both of these pulmonary fibrosis claims were approved by DOJ and issued supplements by DOL, and neither case was sent to an IH or CMC.

Member Mahs had a COPD and occupational asthma case with the last two digits 67. The claimant submitted an EE-3 form, and a DOE representative verified that he worked at Hanford and various DOE contractor and subcontractor sites between 1976 and 2005. The claimant did not submit medical evidence, but the Seattle District Office obtained employment documentation from DOE. None of the records indicated a diagnosis of COPD or any other chronic respiratory conditions, and the claim was denied for lack of medical information. In 2018, the claimant obtained an authorized representative who assisted him in gathering the proper medical evidence, and the claim was accepted in 2019. Member Mahs noted that many claimants are more successful in winning their cases once they have an authorized representative to assist them.

Member Dement presented the case of a Paducah worker with a complex work history and several job categories. Claims for asthma, acute bronchitis, and COPD were all denied. Member Dement agreed with most of the record of denial, partly because the medical evidence was not built up well. The CE worked hard to track all of the job titles through the SEM and arrive at exposures, and the IH came up with low exposures. There was a DAR request for use of respirators for the claimant, with a stated reason of acid gases. The CMC's review of the case was very factual, but did not seem to consider the combination of all of the different exposures contributing to COPD. Member Goldman said that it seemed like the claimant could have had exposure to irritants as an exacerbating factor and it did not seem like that was considered.

Member Friedman-Jimenez said that he agreed with the final decision in asthma cases 5938, 0125, and 1066, but he noted that the SEM does not seem to reflect the causes of asthma. Chair Markowitz said that the PM acknowledges that any exposure can aggravate, cause, or contribute to asthma in the workplace and therefore they do not link it to any of the 250 known causes. Mr. Vance added that the threshold for asthma claim approval is very low and mostly relies on the medical information from a physician rather than an IH's assessment of exposure. Chair Markowitz asked about a case where CE says that a claimant has asthma and asks whether it is occupational in nature, but the

CMC looks at the available records and concludes that the claimant does not have asthma at all. Mr. Vance said that it is important for CMCs and CEs to ask the right questions because if they receive answers to questions that they should not have asked, it can lead to further problems. Physicians should ask the CE to clarify rather than answering questions when they are unclear about the facts. Chair Markowitz noted that the physician has greater expertise around disease than the CE does.

Member Pope agreed with Chair Markowitz and mentioned case 3767, where a COPD claim was approved but asthma was denied. There was supporting information from the attending physician as well as the work history to prove that the claimant was exposed to dust and other irritants.

Member Mikulski talked about case 536, a Hanford worker who held mostly administrative positions and was diagnosed with asthma based on bronchodilator tests. The primary care physician opined that based on the review of work history it was most likely occupational asthma, as did a second physician. The CMC agreed initially, but then said that based on the scarce medical history the asthma seemed seasonal, and the claim was denied.

Member Silver presented two cases of occupational asthma from Oak Ridge, 1633 and 0073. Both cases were evaluated by a pulmonologist who knows the site very well, and in both cases the CE relied on the physician's opinion and medical evidence rather than identification of a specific agent. In one case the CE sent the impairment evaluation back to the independent medical examiner when they noticed an error, and both claims were eventually accepted.

Chair Markowitz had a case for COPD where he agreed with the IH report and the final decision to deny, but there was a problem with the logic of the CMC report. The CMC denied the claim because they reasoned that the lack of asbestosis prevented them from linking asbestos to COPD, which is not true.

Member Redlich summarized a recent publication from the American Thoracic Society about the burden of idiopathic lung disease due to occupational exposures. This research focused on ILD and sarcoid, for which the occupational burden had not previously been estimated in an evidence-based fashion.

Member Berenji presented a CBD case, 334, and noted that items like the SOAF and IH and CMC reports were not included. The claimant worked at Savannah River as a laborer, and his OHQ was

very telling because he described packing contaminated dirt into bags as part of his work activities. Given the missing materials and limited medical documentation, this qualitative information was especially important. The claimant had a history of sarcoidosis, but there was not enough information to determine how it developed. This case could benefit from reassessment given that the claim denial was based on a lack of appropriate medical information.

Member Dement reviewed a claim of COPD, sarcoid, and sleep apnea from a claimant who worked at several DOE sites and was exposed to beryllium. Several tests for beryllium sensitivity came back negative, and the claim was denied. One physician noted that the individual was on steroids, which could have masked the beryllium sensitivity, but some lymphocyte proliferation tests (LPTs) were administered prior to steroid use.

Member Redlich introduced a sarcoid/COPD case with a claimant who worked at Savannah River for 49 years. The CE noted that there was a pre-1993 diagnosis of CBD and there was pre-employment documentation that the employee did not have CBD. The SOAF noted that the potential for beryllium existed at Savannah River throughout its operation. The CMC was asked if employment at the site was a significant factor in the claimant's diagnosis of sarcoidosis, and the first CMC thought that instead of sarcoidosis the claimant had CBD. The CE then sent the case to a different CMC, who answered the original question in the affirmative. While it is good that the claim was accepted, beryllium does not cause sarcoid, so the answer to the question could easily have been no. Member Friedman-Jimenez said that training CEs in this specific circumstance could be useful, and Chair Markowitz said that the PM does address the potential for misdiagnosis of CBD as sarcoidosis. Mr. Vance agreed that the sarcoidosis/CBD question is tricky, but the statute lays out the precise requirements for establishing a viable CBD case, which relies heavily on a medical opinion of a chronic respiratory disorder consistent with a CBD condition.

Member Mahs presented case 3034, a CBD claim where the claimant worked at Coors Porcelain and participated in a beryllium screening program while employed there. She provided affidavits from coworkers attesting to which buildings she worked in, and she was a covered employee for one year. Member Domina noted that under 10 CFFR 850, employees only need to have worked at a covered site for one day in order to be accepted.

Member Mikulski presented a pre-1993 sarcoidosis CBD case with

the last three digits 580. There was an unusually fast turnover between the questions posed to the CMC and their response, given the large volume of documentation provided. The worker performed various jobs at Y-12 and K-25 over a period of 40 years and was diagnosed with pulmonary sarcoidosis in 1978. Following a diagnosis of prostate cancer, they filed claims for cancer and lung disease under Subtitle B and Subtitle E, and both claims were denied. The CE specifically asked the CMC whether the medical evidence on record met the pre-1993 diagnosis guidelines, and the CMC's opinion was based on a mix of pre- and post-1993 criteria. Despite meeting all of the pre-1993 criteria, the claim was denied. Several members agreed that this case should be re-reviewed. Member Silver asked whether CMCs are paid by the case or by the hour, and Mr. Vance said that they are paid by the case.

Member Berenji reviewed a survivor claim with the last three digits 048. The worker had filed a claim for beryllium sensitivity, and it was accepted in 2015. He passed away in 2016, and his significant other filed for benefits claiming CBD instead of beryllium sensitivity. This was a case where terminology was very important; because the terminology was different in the two cases and the CE determined that there was not enough medical documentation for CBD, the survivor's benefits were denied.

Member Redlich presented a case of an electrician from Savannah River who was diagnosed with sarcoidosis with pulmonary involvement and conjunctival eye involvement, as well as ILD. She has been on high doses of prednisone since that time. More recently she had a BeLPT that was negative, though that could be a side effect of steroids. The SOAF acknowledged her diagnosis but claimed that she did not have evidence of active disease. The SEM showed no exposure for sarcoidosis, and her claim was denied. This is an example of a case where a false negative BeLPT and lack of tissue diagnosis could both be explained and a CT scan and pulmonary test both supported the claim.

Member Silver presented another CBD case with a claimant who worked at Los Alamos. His last ten years were spent as a supervisor for a process that is notorious for intensive work with plutonium. After his CBD claim was denied, he developed prostate cancer, cataracts, and narrow-angle glaucoma, but his dose to the eye was below NIOSH's minimum limit. The claimant also developed colon polyps and hearing loss, but his audiogram was never reviewed by a physician, so he was not compensated for hearing loss.

Chair Markowitz introduced a discussion of the limitations of the claims that the board has reviewed. This falls under Task 4 for the board: to evaluate the objectivity, consistency, and quality of the industrial and medical input into claims evaluation. Member Dement said that it is important to remember that IH assessments are qualitative in nature and predicated on the IHs' experiences. The scope of knowledge with regard to a particular job and exposure should be identified, and IHs should explain their basis for assigning a low, medium, or high level of exposure.

Member Redlich noted a theme around the concentration of exposure versus the years of employment. There is a difference between one to two years and twenty years, and CEs and CMCs should take into consideration the duration of exposure as well as the estimated amount. Member Berenji said that as an independent medical examiner, insurance companies often asked her to opine on certain questions. She felt that if she, or the CMC in these cases, sees something that does not add up and needs additional insight for the case, it is their obligation to provide those additional medical facts. Chair Markowitz said that they needed to accept that the professional expertise of the IH plays a role, but what is missing is insight from the claimant and their experience at the workplace. Few IHs seem to cite this in their reports. Member Dement added that even the worker themselves often cannot relate an accurate picture of their exposure since they are asked to recount many years and many different sites. Hopefully the new OHQ will help to alleviate this issue.

Member Berenji mentioned DOL's determination not to provide the entire case file to the CMC and encouraged the department to reconsider. Member Friedman-Jimenez added that the concern about giving the CMC too much material to sort through could be addressed by a good indexing system. Chair Markowitz noted that some of the CMC evaluations are excellent, while there is another, smaller group of reports that are unacceptably poor. He asked whether the contractor, QTC, has a quality assurance process in place. Mr. Vance said that QTC did have an internal process that was informed by DOL's auditing process. There have been times in the past when they have removed physicians and implemented remediation training, and they welcomed input from the board on how to better screen problematic reports. Chair Markowitz said that his concern was that the review of causation competence in the CMC report was incomplete and it was probably not the emphasis of the medical director. Member Pope added that

there was a similar concern with CEs, who are the ones building the case and flagging documents for the CMC and the IH to look at. Member Domina agreed and said that if a mistake is made early on, that mistake only tends to get bigger as the review process continues.

Member Redlich said that in a number of claims where she had issues with the final decision, the physician was not asked the right question. Chair Markowitz pointed out that the CE who is formulating the questions has a limited set of knowledge and sometimes their questions will not be right. When they refer those questions to the IH or the CMC, there should be a corrective process to allow the SOAF to be corrected over time. Member Goldman proposed that there could be a system where a random sample of all the rejected claims was reviewed again by a different CE, and Member Dement agreed. Member Redlich asked about the total number of CEs, and Mr. Vance said that there were approximately 250 and they are trained to apply the criteria of the statute to whatever cases they come across. Member Redlich suggested that there should be a group of CEs specifically trained to handle issues like the beryllium/sarcoid identification.

Public Comments:

Terrie Barrie, Alliance of Nuclear Workers Advocacy Groups

Ms. Barrie referenced the EEOICPA Ombudsman's recent report to Congress, which includes recommendations to improve the program. She drew the Board's attention to concerns that the SEM does not list all of the buildings, incidents, and/or toxic substances that first responders encounter in the course of their job duties. She said that she was glad to hear about the new quality assurance program to review claims, although she had some concerns about it interfering with the board's statutory responsibilities. In light of the recent Adams v. DOL decision, she suggested that the board could provide guidance to DEEOIC on the relationship between elevation of risk and aggravation of disease. She also raised concerns about the new version of the PM.

Vina Colley, Co-founder of National Nuclear Workers for Justice

Ms. Colley said that her union compiled specific data on buildings and exposures, and she wanted the board to look at the SEM to make sure that those figures were included. She also wanted the board to look at a radiological chemical report by

Kenton J. Moody from January 1995 for its information on Paducah, Portsmouth, and Metropolis, all of which handled reactor fuel from Russia. Americium has been found in air filters and has shut down one school in Piketon, Ohio. She cited a case of a worker with cancer who went to the union to request his records, only to be told that DOL had taken them. Ms. Colley also clarified that the Resource Center employees are not certified advocates and they need help to put records and claims together.

Stephen McFadden

Mr. McFadden talked about his history and his family's history working at DOE and ERDA sites. He raised occupational health concerns relating to students, interns, and summer workers working with potential exposure to exotic toxics. SEC exposure cohorts require 250 days of work, but students may work less than that. EEOICPA was passed in 2000, which is six decades into the nuclear weapons program, and was formulated presuming that other benefits were accessible.

Evelyn Jeffords

Ms. Jeffords's husband Robert worked at the Paducah Gaseous Diffusion Plant. Ms. Jeffords's claim was denied for three of the five statutory requirements for beryllium disease, and her authorized representative, Gary Vander Boegh, explained that claims examiners in the area often deny claims based on procedures rather than statutory requirements. They hope to reopen her claim, along with others, in front of Judge Thomas B. Russell.

Gary Vander Boegh

Mr. Vander Boegh is one of the only authorized representatives in the Paducah area, and many claimants come to him for help because he is also a sick nuclear worker. He explained his family's history working at nuclear sites as well as his own work history with Lockheed Martin and as an advocate for claimants. Mr. Vander Boegh was a whistleblower, and he was among the Paducah workers who found plutonium at the plant, even though that is not documented in the SEM. There is plutonium at several other sites as well, and there is a pattern of workers at these sites being misdiagnosed.

Donna Hand

Ms. Hand talked about the SEM and its statutory definition of toxic substances. The language mentions substances with the potential to cause harm, not just those that are definitively proven to cause harm. In 2005 OWCP determined references that CMCs could use, including PubMed. Now CMCs do not use many of these same resources because they claim they are not well-rationalized, even though treating physicians use those references. She asked if, since NIOSH and OSHA have both informed the public about target organs affected by toxic substances, a claimant could use the target organ of a toxic substance to provide a scientifically-known link between exposure and claimed illness. She also asked the board to consider what constitutes a well-rationalized report.

Deb Jerison, Energy Employees Claims Assistance Project

Ms. Jerison relayed concerns that she has heard through her work at EECAP. Regarding expedition of terminal claims, DOL is now requesting that a doctor's letter state that a claimant's death is imminent, rather than terminal. Hospice patients have varying experiences, and they and their families often face emotional distress when told that death is imminent. National office medical benefits examiners can help claimants with medical billing issues, but most claimants are not savvy enough to find them. Claimants and doctors need more help and resources to handle the problems associated with medical bills. It would be helpful if DOL could develop clear, concise directions written for lay people to explain how to deal with these issues.

David Nelson

Mr. Nelson filed two claims, one for asthma and one for cancer, and both were denied. He worked for two years in roofing at the Paducah site without any personal protective equipment. After he wore his work clothes home, his wife developed thyroid problems, and his son passed away from cancer. Mr. Nelson felt that his claims should be reexamined.

Howard Cook

Mr. Cook worked at multiple DOE sites and had a claim denied. He said that Honeywell does not seem to receive as much attention as other sites in the sick worker program. At his plant, the only thing that they use for dose reconstruction is urinalysis.

Minnie Donald

Ms. Donald has fourteen illnesses approved, after initially being denied for most of her claims. Her CBD claim was denied with one authorized representative, but was recently approved with a different representative even though they submitted the exact same information. There are limits on impairment rating and wage loss, but those are combined, so Ms. Donald is still owed several years' worth of wage loss and cannot get any more impairment ratings.

Mike Driver

Mr. Driver is a former Paducah worker. He worked at the plant because that job had the best benefits, but no one told him how dangerous it would be. He worked as a crew lead packing up drums of UF4 uranium which were contaminated with plutonium, arsenic, lead, silver, nickel, and mercury, even though industrial hygienists denied that any of those elements existed in the plant. He has applied for lost wages three times and has been denied all three times and told that he does not qualify.

Adjournment:

Chair Markowitz adjourned the meeting for the day at 6:08 p.m.

THURSDAY, NOVEMBER 21, 2019

Call to Order:

Chair Markowitz called the meeting to order at 8:34 a.m.

DEEOIC Ombudsman, Malcolm Nelson:

Mr. Nelson thanked the board for their work and gave his perspective on issues that arose during the first day. He agreed that there needs to be more education about the program for claimants. Many claimants do not know how to develop medical evidence or how to interpret the SEM. Often they think that they need to develop their case before submitting the claim, when in reality the opposite is true. Concerns emerged regarding the reasonableness of asking for imminent death to be defined, as well as consequential illnesses and which ones are automatically covered. From the program's point of view, if they have a large number of hospice patients, they want to be able to prioritize cases. On the other hand, it is too much to ask both the medical community and families to bear the determination that death is imminent. The way that EEOICPA is interpreted, employees of beryllium vendors are only covered under Part B, and under Part

B they are only covered for CBD and beryllium sensitivity. Beryllium is now a known carcinogen, so there is some question of why the program does not cover cancers caused by beryllium exposure. Chair Markowitz said that beryllium is recognized as a known carcinogen under Part E.

Report from Parkinson-Related Disease Working Group:

At the beginning of the current board's term, the department asked for their assistance in examining which toxins are known to produce Parkinson's disorders. Member Mikulski gave an update on the working group's recent work and a summary of the presentation that the group gave earlier this year. Research on Parkinson's is going in several ways; some focuses on hereditary etiology, while other research efforts aim to establish clinical testing to identify Parkinson's in the early stage. There are attempts to investigate potential risk factors that have been shown in animal models in epidemiology studies in a human population. Multiple epidemiological reports provide evidence in support of the association between Parkinson's disease and exposures to pesticides, solvents, polychlorinated biphenyls and metals. However, these studies do not provide quantitative exposure assessments, nor do they answer questions of latency and temporality. Right now, it is premature to make any causation presumptions. The working group hoped that a brief document they compiled could provide a basis for recommendations to DOL on diagnostic questions. Chair Markowitz suggested that before the next meeting, the board should aim to fully consider other toxins and their causality and develop a recommendation to the department.

Review of Public Comments:

Board members highlighted public comments from the previous day. Ms. Barrie's point about firefighters' exposures missing from the SEM is part of the wider issue of job titles that should be considered as site-wide workers. Chair Markowitz asked whether certain job categories that have site-wide jurisdiction could be developed as a class in the SEM that is recognized to have potential exposure to any toxin at the site. Mr. Vance said that anything was possible, and they would welcome the board's advice.

Board Recommendation:

Chair Markowitz drafted a recommendation, and after some discussion the board voted unanimously to submit the following

as a formal recommendation to DOL: "The Board recommends that the Department, as part of the Site Exposure Matrices, identify job categories at DOE sites that likely have worked throughout the applicable sites and would have had potential exposure to many or all listed toxic substances at those facilities."

Review of Board Tasks, Structure and Work Agenda:

The board revisited its discussion of the quality, objectivity, and consistency of the IH and medical evaluations, which falls under Task 4. Twenty-eight percent of the claims evaluated for impairment were considered to need improvement. Chair Markowitz said that it seems like there is a quality problem with the contractor's impairment evaluations. Mr. Vance summarized his staff's post-audit analysis of the medical director's report and the subsequent discussions that they have with QTC. Member Dement pointed out that there are still claims that have not been examined by any board members and suggested that they compile and distribute a list of those claims.

Chair Markowitz asked if there was a similar audit process for IH reports, and Mr. Vance said that there was not. Chair Markowitz suggested that the board consider whether that process should take place. Member Berenji said that she had already started to draft that process and would take the lead in formalizing it. Chair Markowitz requested that DOL provide the board with the set of questions that the IH uses for occupational health interviews. Not every case requires a one-on-one interview, but it would be helpful to have a process in place for those that do need them. Several members agreed that it would be helpful to have a list of search terms that would automatically trigger an IH review.

Task 2 of the board is to look at how CEs weigh medical evidence. The board revisited comments about the challenge for CEs with limited backgrounds in occupational health whose statements of accepted facts are contradicted by the CMC. Member Pope asked if there is a senior CE who reviews a sample of claims that the CEs submit. Mr. Vance explained that each CE receives performance assessments. There is also a supervisory review process and an annual accountability review process, where they go to each jurisdictional district office and conduct a team review. At Member Domina's suggestion the board looked at the new PM's language around terminal illness.

Chair Markowitz led a discussion about the board's work going forward. The board's current term will end in July of 2020, and

there will be two meetings before that time. One will be a telephonic meeting where the members come back to the issues of Parkinson's disease and firefighter exposures in the SEM and potentially make recommendations on these two topics to DOL. They will continue to look at claims review and begin to formulate recommendations regarding IH and CMC evaluations with respect to objectivity, consistency, and quality, and potentially a recommendation around CEs' weighing of medical evidence. There will also be an in-person board meeting in the spring of 2020.

Continued Review of Public Comments:

Ms. Rhoads has compiled a spreadsheet of public comments, and she will continue to update it going forward. Chair Markowitz referenced Donna Hand's comment from the day before about a list of authoritative sources for CEs and CMCs. He asked if sources outside of that list could be acceptable in a well-rationalized report if they address the issue of causation in the case, and Mr. Vance said that they could be. Chair Markowitz said that in the interest of transparency it might be helpful to encourage the IH and physicians to list all of the sources that they use.

Continued Review of Board Tasks, Structure and Work Agenda:

Chair Markowitz requested that DOL inform the board of what changes in the exposure-disease links have been made in the SEM from January 2018 to the present. Member Dement mentioned that the only presumption for COPD was 20 years of asbestos exposure, which is very limiting. The board will continue to discuss this topic in the future. Chair Markowitz asked the department to provide the board with a certain number of occupational lung cancer claims to be reevaluated, and several other members expressed interest. Member Redlich said that she had compiled a list of issues for the board to address in the future, and Chair Markowitz said that they would use it as background for the upcoming telephonic meeting.

Adjournment:

Mr. Fitzgerald adjourned the meeting at 10:58 a.m.

I hereby certify that, to the best of my knowledge, the foregoing minutes are on accurate summary of the meeting.
Submitted by:

Steven Markowitz, MD, Dr.Ph.
Chair, Advisory Board on Toxic Substances and Worker Health
Date: 1/28/2020